

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 94-304-W - ORDER NO. 97-372

MAY 6, 1997

IN RE: Application of Upstate Heater Utilities, ) ORDER  
Inc. for Approval of an Increase in its ) DENYING  
Water Rates and Charges. ) PETITION FOR  
 ) REHEARING AND  
 ) RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Rehearing and Reconsideration of our Order No. 97-232 filed by Upstate Heater Utilities, Inc. (Heater or the Company). For the reasons stated below, the Petition must be denied.

First, Heater complains that the Commission has unduly penalized Heater for non-account purchased water. The Company notes that since the Commission approved an adjustment to the purchased water expense to remove the portion of the expense representing an amount of non-account water deemed excessive by the Commission Staff, that the Commission somehow doubly penalized Heater by partially basing its conclusion that the proposed cost of the water is too high on the excessive amount of non-account water. We agree with the Company that an adjustment was made to the expense representing non-account water for the difference between 8.41%, the amount of non-account water present in this case, and the 7.54% "outer limit" set by this Commission in past

water cases. However, we would note that Seabrook Island Property Owners Association vs. The South Carolina Public Service Commission, 303 S.C. 493, 401 S.E.2d 672 (1991) notes that the rates approved by the Public Service Commission may be based on a number of factors for consideration by the Commission, one of which is the price that the Company's service is rendered. See Petition at p. 3. We hold that excess non-account water is certainly one factor that the Commission must examine in examining the price of the water provided by the Company. Although the adjustment is helpful, the fact that excessive non-account water is present must be considered when the overall price of the Company's service is determined. Therefore, we believe that the Commission was correct in considering the amount of non-account water when setting the final rates for the Company in this case, based upon the Seabrook Island Property Owners Association case. We discern no error.

Second, Heater states that the Commission erred by failing to set a reasonable operating margin. The South Carolina Supreme Court has held that the determination of a fair operating margin is peculiarly within the province of the Commission and cannot be set aside in the absence of a showing that it is unsupported by the substantial evidence in the record. See Seabrook Island Property Owners Association, 401 S.E.2d at 675. We would note that the Commission Order No. 97-232 is replete with evidence to support the Commission's finding. The Commission noted the factors noted in the case law, that is, the proposed price for

which Heater's service is rendered, the quality of such service, and the effect of the proposal upon the consumer. Order No. 97-232 noted that an increase of 20.51% as proposed by the Company is excessive, and more than the customers of the area should pay for the water that they are getting from the system. The Order also noted the customer complaints presented to the Commission, the non-account water as stated above, and finally, the fact that Heater is a part of a large out-of-state conglomerate company with limited need to attract capital on its own. In fact, Heater simply disagrees with the amount granted by the Commission.

We believe that we have examined all of the relevant factors in the case, and that our granting of 1.19% operating margin was appropriate under the circumstances.

Third, Heater complains that the Commission denied the entire rate increase in the service area of approximately 1200 customers based upon testimony of only 19 customers at a public hearing.

It should be noted that although Order No. 97-232 certainly referred to complaints of water quality by residents of areas served by Heater, the Commission based its denial on a number of factors, in addition to this testimony, all of which have been listed and discussed above. Therefore, we do not believe that Heater's third allegation is meritorious.

Fourth, Heater notes that in its opinion, there is not substantial evidence to support the decision of the Commission. On the contrary, the evidence is replete with bases for limiting the operating margin of Heater to 1.19%.

We have examined all relative factors in the case as set out by the case law of South Carolina. We do not believe that Heater should receive any higher rate, and that the operating margin of 1.19% is fair and reasonable under the circumstances in this case. We are mindful of the various open Bluefield standards, however, we believe that the evidence presented supports our decisions in full.

Fifth, Heater complains that the Commission failed to make proper findings of fact. On the contrary, the Commission fully explained its reasoning in the case, including detailed reasoning for all accounting adjustments presented in the case. We do not believe that we could have more fully explained the factors upon which we based our decision. We believe that our decision is sufficient to allow a reviewing court to examine the basis upon which we made our decision, and we therefore reject Heater's fifth allegation of error.

Sixth, Heater complains that the Commission exceeded its authority in denying the rate increase request in the absence of a showing that Heater failed to comply with applicable water quality regulations. Once again, we noted with interest in our Order that a number of customers in the area complained of poor quality water. We do not believe that the DHEC standards must be violated to constitute unacceptable water quality. Complaints of slick water, water that presents odor, discolored water, and other things may not violate DHEC standards, but such water is exceedingly unpleasant for customers of the Company system to

utilize. Further, the complaints of the customers were but one factor in our denial of the Company's request for a rate increase. As discussed above, numerous other factors were employed on which to base our decision. Even so, we do not believe that a violation of DHEC standards must be shown to indicate poor quality water.

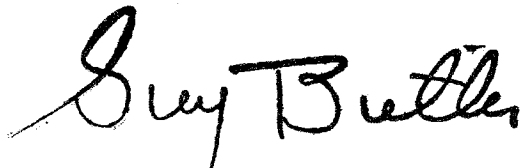
Lastly, Heater alleges that the Commission erroneously concluded that the proposed increase would be problematic to the customers. Heater states that the difference in the actual cost to the customers between the rates granted and what the evidence "shows to be a fair rate of return" is really quite small. We disagree with this proposition. The evidence showed that had the Commission granted the increase proposed by the Company, the customers would have suffered a 20.51% increase in its bills. In Order No. 97-232, we held that such a percentage increase was excessive. We reaffirmed this holding and state that in view of the service provided by the Company, and the other factors mentioned in Order No. 97-232, we do not believe that the increase was warranted under the circumstances.

IT IS THEREFORE ORDERED THAT:

1. The Petition for Rehearing and Reconsideration of Order NO. 97-232 is denied.

2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

---

ATTEST:

  
Executive Director

---

(SEAL)